

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,  
Debtors.<sup>1</sup>

PROMESA  
Title III

Case No. 17-BK-3283 (LTS)  
(Jointly Administered)

**VERIFIED MOTION OF NTT DATA EAS, INC.  
FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM**

Comes now NTT DATA EAS, INC. (“NTT Data”), by and through the undersigned counsel, hereby files this motion for allowance of its administrative expense claim and respectfully states:

**Introduction**

On September 25, 2018, more than a year after the filing of the present petition, NTT Data and the Environmental Quality Board (“EQB”) executed a *Professional Services Contract* for Fiscal Year 2018-2019. The *Professional Services Contract* was extended and amended twice: on April 8, 2019 and July 31, 2019. In the *Professional Services Contract*, the EQB agreed to pay NTT Data for the services rendered in a sixty (60) day period from the approval of the

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

corresponding invoice, which approval was not to be withheld unreasonably by the EQB. Contrary to the contractual terms stipulated by the parties, NTT Data has not received the payment for five (5) invoices, amounting to \$176,713.20. Consequently, and pursuant to the applicable law, NTT Data respectfully requests that its post-petition expense be considered an administrative expense claim of the Debtor and be granted priority treatment accordingly.

### **Facts**

1. On May 3, 2017, the Financial Oversight and Management Board for Puerto Rico (“FOMB”) filed a voluntary petition on behalf of the Commonwealth of Puerto Rico pursuant to section 304(a) of the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”).
2. NTT Data is a corporation organized under the laws of Michigan, U.S.A., with main office at 1660 International Drive, Suite 300, McLean, VA 22101.
3. NTT Data is authorized by the State Department of the Commonwealth of Puerto Rico to do business in Puerto Rico.
4. On September 25, 2018, the EQB and NTT Data executed a *Professional Services Contract* for Fiscal Year 2018-2019 for consulting services. As per Article XII, the *Professional Services Contract* was to be in effect until June 30, 2019.
5. As per Article IV of the *Professional Services Contract*, NTT Data would submit monthly certified invoices, which the EQB had to approve and process for payment. The EQB had to pay the submitted certified invoices within a sixty (60) day period after their approval, which approval was not to be unreasonably withheld by the EQB.

6. Article IV of the Professional Services Contract also required the EQB to notify NTT Data if there were disputed items in the certified invoices that were submitted for approval and payment.
7. The Professional Service Contract between the EQB and NTT Data was filed with the Commonwealth's Comptroller's Office and identified as Contract No. 2019-000014.
8. On April 8, 2019, the parties executed a Professional Service Contract Amendment, also for Fiscal Year 2018-2019. The parties did not alter their invoicing and payment obligations in this amendment.
9. The Professional Service Contract Amendment between the EQB and NTT Data was filed with the Commonwealth's Comptroller's Office and identified as Contract No. 2019-000014A.
10. The Commonwealth enacted Act 171-2018, requiring the Commonwealth's Department of Natural and Environment Resources ("DNER") to administer all the programs under the EQB's prior administration.
11. On July 31, 2019, NTT Data, the EQB and DNER executed an Amendment [to] Professional Service Contract to extend the contract period until December 31, 2019.
12. The invoice and payment obligations among the parties remained unchanged.
13. The Amendment [to] Professional Service Contract between the EQB and NTT Data was filed with the Commonwealth's Comptroller's Office and identified as Contract No. 2019-000014C.
14. NTT Data submitted certified invoices 9201000185, 9201000191, 9201000198, 9201000212 & 9201000216 for the services rendered from August 2019 to December 2019. Those invoices totaled \$176,713.20.

15. Up to the date of the filing of the present motion, and despite NTT Data's multiple communications and efforts, the EQB and the DNER have not paid the certified invoices identified in the previous paragraph. Therefore, NTT Data has a right to be compensated for its post-petition services to the EQB and DNER as an administrative expense of the Debtor pursuant to Section 503 of the Bankruptcy Code and be granted priority treatment accordingly.

**Applicable Law and Discussion**

16. Section 503 of the Bankruptcy Code, as incorporated by section 301 of PROMESA, allows an entity to timely file a request for payment of an administrative expense. After notice and a hearing, the actual, necessary costs and expenses of preserving the estate shall be allowed as an administrative expense. Section 301(a) of PROMESA, 48 U.S.C. 2161(a), incorporates section 507(a)(2) of the Bankruptcy Code, giving priority to administrative expenses that are allowed under section 503 of the Bankruptcy Code.

17. This Court has yet to establish a deadline for filing administrative expense claims. Thus, NTT Data's request is timely.

18. The term "preserving the estate" has been expansively interpreted by the courts on a case-by-case basis and is not to be interpreted narrowly, *see* COLLIER BANKRUPTCY MANUAL 503-18.

Although the trustee has an implicit duty to preserve and safeguard the estate and its assets for the benefit of all creditors, preservation may also include and be a means to other ends in the administration of an estate, such as the continuation of the business or an orderly liquidation.

*Id.*

19. The First Circuit developed a two-prong test to determine whether to allow an administrative expense claim, which was recently followed by this Court. *See In re Financial Oversight and Management Board for Puerto Rico*, 481 F.Supp. 3d 60, 64 (D.P.R. 2020). According to this recent decision, a request under Section 503(a) of the Bankruptcy Code may qualify if the right to payment arose from a post-petition transaction with the debtor estate, rather than from a prepetition transaction with the debtor, and the consideration supporting the right to payment was beneficial to the estate of the debtor. *Id.*
20. Debtor's Plan of Adjustment also recognized the existence of administrative claims for post-petition services. *See* "Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.", Docket No. 17627, ¶¶ 1.51 & 1.52 & Article III.
21. The amounts herein claimed by NTT Data were the agreed-upon fees for the services that the EQB and DNER deemed necessary and beneficial to their operations.
22. NTT Data provided professional services to the EQB and/or DNER, after executing a post-petition Professional Services Contract for Fiscal Year 2018-2019 and two amendments to the same, in compliance with the terms specified by EQB and DNER and for the benefit of these two instrumentalities of the Commonwealth and the Puerto Rican people. Therefore, NTT Data is entitled to, and has a valid, enforceable administrative expense claim.
23. In the alternative, and assuming *arguendo* that this Court considers that the requirements of Section 503 are not met, which is hereby denied, this Court can still grant NTT Data's request under the doctrine of 'fundamental fairness' adopted by the Supreme Court in the case of *Reading Co. v. Brown*, 391 U.S. 471, 88 S.Ct. 1759, 20 L.Ed.2d 751 (1968).
24. The facts of *Reading* are as follows: a trustee was appointed to administer the debtor's business consisting solely of an industrial structure and, under the supervision of the

trustee, the building was destroyed by a fire. The question then before the Court was whether the tenants' and fire loss claimants' claims should be considered administrative expenses under the bankruptcy proceeding. The trustee argued that the fire loss claimants should not be entitled to administrative expenses claims since the main purposes of the bankruptcy proceeding are to facilitate rehabilitation of the insolvent business and to preserve a maximum of assets for distribution among the general creditors. The Supreme Court was not persuaded by these arguments and concluded that "[i]n our view the trustee has overlooked one important, and here decisive, statutory objective: fairness to all persons having claims against an insolvent." *Id.* at 477.

25. The *Reading* doctrine was recently recognized by this Court. Citing the Bankruptcy Appellate Panel for the First Circuit in the case of *In re Healthco International Inc.*, 272 B.R. 510 (BAP 1st Cir. 2002), *aff'd.*, 310 F3d 9 (1st Cir. 2002), this Court explained that the "fundamental fairness" exception is recognized, among others "when the claim arises from postpetition actions that deliberately violate applicable law and damage others." *In re Financial Oversight Board and Management Board for Puerto Rico*, 481 F. Supp. 3d at 65.

26. The services performed by NTT Data were done in accordance with the requirements established by the EQB and DNER in the post-petition Professional Services Contract for Fiscal Year 2018-2019 and its two amendments. However, the EQB and DNER failed to comply with the contract and have refused to pay certified invoices 9201000185, 9201000191, 9201000198, 9201000212, and 9201000216 in the total amount of \$176,713.20.

27. Consequently, considering the equities and the fairness of the case, and even if the Court considers that there was not a direct benefit to the estate, NTT Data is entitled to receive compensation for the expenses incurred. NTT Data's claim should be considered as an administrative expense for two reasons. First, because the expenses requested herein were the actual necessary costs for providing the services agreed-upon in the post-petition contract executed by NTT Data, the EQB and DNER. Second, because this claim arises from the post-petition contract and the EQB's and DNER's failure to comply with the same violates applicable law and is in NTT Data's detriment.

### **Conclusion**

For the reasons stated above, NTT Data's claim complies with the requirements of Section 503 of the Bankruptcy Code, as incorporated by section 301 of PROMESA. NTT Data's *Professional Services Contract* for Fiscal Year 2018-2019 and its two amendments were awarded after the filing of the present petition and the post-petition certified invoices were submitted for professional services that were rendered post-petition. The expenses herein claimed total \$176,713.20. Consequently, NTT Data urges this Court to enter an order granting the present motion.

WHEREFORE it is respectfully requested that this Court enter an order determining that NTT Data's claim be considered an administrative expense of Debtor, entitled to administrative priority pursuant to Section 503 and Section 507 of the Code and enter any other relief as is just and proper.

**Respectfully submitted.**

In Guaynabo, Puerto Rico, on December 15, 2021.

**ARROYO & RIOS LAW OFFICES, P.S.C.**  
PMB 688

1353 Ave. Luis Vigoreaux  
Guaynabo, P.R. 00966  
Tel.: (787) 522-8080  
Fax: (787) 523-5696  
E-mail: mrios@arroyorioslaw.com

*s/ Moraima S. Ríos Robles*  
Moraima S. Ríos Robles  
USDC-PR No. 224912

*s/ Jessica A. Figueroa-Arce*  
Jessica A. Figueroa-Arce  
USDC-PR No. 225206

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice electronically to all counsel of record, and will provide hard copies to the Court and United States Trustee as soon as practical after the filing of the foregoing, consistent with the Court's Fifteenth Amended Case Management Order. *See* Docket No. 17127-1.

Dated: December 15, 2021.

*s/ Moraima S. Ríos Robles*  
Moraima S. Ríos Robles  
USDC-PR No. 224912



**VERIFICATION UNDER PENALTY OF PERJURY  
PURSUANT TO 20 U.S.C. § 1746**

I, Rick D. Johnson, of legal age, single married resident of Santa Rosa Beach, FL, hereby state under penalty of perjury that:

1. I have read the foregoing Verified Motion of NTT DATA EAS, INC. for Allowance of Administrative Expense Claim; and
2. The factual assertions in the Verified Motion of NTT DATA EAS, INC. for Allowance of Administrative Expense Claim are true and correct to the best of my knowledge, information and belief and/or pursuant to documents in my possession and my personal involvement in the facts of this claim.

Executed in Santa Rosa Beach, Florida, this 22nd day of October 2021.

  
Vice President, Public Sector  
NTT DATA, Inc.

Invoice Number	9201000185
Invoice Date	09/26/2019
Due Date	11/25/2019

**Bill To :**

Environmental Quality Bd of PR  
PO Box 11488  
San Juan  
PR, PR 00910  
USA

**Ship To :**

Environmental Quality Bd of PR  
PO Box 11488  
San Juan  
PR, PR 00910  
USA

Customer Number :	100237	Customer VAT ID :	
Payment Terms :	Net due in 60 days	Contract No :	4400022554
Contact Person :	Tania Vazquez	PO Number :	N/A

**Amount Due : USD 18,290.40**

Billing Period From : 08/01/2019

To : 08/31/2019

To ensure proper credit, please include invoice number with remittance.  
For billing questions, please contact [Billing.Inquiry@nttdata.com](mailto:Billing.Inquiry@nttdata.com) or  
call +1 781 577 3495  
NTT Point Of Contact : Eduardo Delannoy

Description	Qty	UOM	Rate	Gross Amount	Surcharge	Discount	Tax Amount	Net Amount USD
Project ID:	R-0020032015	Continuance of Services for FY2019						
Beatriz Saez								
Consulting Hours	44.80	HRS	98.00	4,390.40				4,390.40
Eduardo Delannoy								
Consulting Hours	60.00	HRS	115.00	6,900.00				6,900.00
Arlene Alcoba								
Consulting Hours	56.00	HRS	90.00	5,040.00				5,040.00
Wanda Lugo Cintron								
Consulting Hours	28.00	HRS	70.00	1,960.00				1,960.00
Project SubTotal:	188.80	HRS		18,290.40				18,290.40
					Net Price :		18,290.40	
					Total Due :		18,290.40	

Trusted Global Innovator

NTT DATA EAS, Inc.  
100 City Square, Boston, MA 02129, VAT Registration  
Number: 0006583-0009  
Municipality Reg (San Juan): , Numero Registro -  
54132025361  
Numero de Seguro Social - 383329879

Tax Invoice

Invoice Number	9201000185
Invoice Date	09/26/2019
Due Date	11/25/2019

**Bank Details :**

Account Name: NTT DATA EAS Inc.  
Bank: BANK OF AMERICA MERRILL LYNCH, NA  
Account Number (USD): 004646890515  
ACH/EFT ABA/Routing Number: 011000138  
SWIFT BIC: BOFAUS3N

**Remit To :**

Please remit payment via EFT (See Bank Details) and  
send remittance details to the following email  
address: NTTDataServices.AR@nttdata.com

Invoice Number	9201000191
Invoice Date	10/15/2019
Due Date	12/14/2019

**Bill To :**

Environmental Quality Bd of PR  
PO Box 11488  
San Juan  
PR, PR 00910  
USA

**Ship To :**

Environmental Quality Bd of PR  
PO Box 11488  
San Juan  
PR, PR 00910  
USA

Customer Number :	100237	Customer VAT ID :	
Payment Terms :	Net due in 60 days	Contract No :	4400022554
Contact Person :	Tania Vazquez	PO Number :	N/A

**Amount Due : USD 51,112.00**

Billing Period From : 09/01/2019

To : 09/30/2019

To ensure proper credit, please include invoice number with remittance.  
For billing questions, please contact [Billing.Inquiry@nttdata.com](mailto:Billing.Inquiry@nttdata.com) or  
call +1 781 577 3495  
NTT Point Of Contact : Eduardo Delannoy

Description	Qty	UOM	Rate	Gross Amount	Surcharge	Discount	Tax Amount	Net Amount USD
<b>Project ID:</b>	<b>R-0020032015</b>	<b>Continuance of Services for FY2019</b>						
<b>Nadia Mendez</b>								
Consulting Hours	56.00	HRS	88.00	4,928.00				4,928.00
<b>Beatriz Saez</b>								
Consulting Hours	128.00	HRS	98.00	12,544.00				12,544.00
<b>Eduardo Delannoy</b>								
Consulting Hours	160.00	HRS	115.00	18,400.00				18,400.00
<b>Arlene Alcoba</b>								
Consulting Hours	153.00	HRS	90.00	13,770.00				13,770.00
<b>Wanda Lugo Cintron</b>								
Consulting Hours	21.00	HRS	70.00	1,470.00				1,470.00
<b>Project SubTotal:</b>	<b>518.00</b>	<b>HRS</b>		<b>51,112.00</b>				<b>51,112.00</b>
						<b>Net Price :</b>		<b>51,112.00</b>
						<b>Total Due :</b>		<b>51,112.00</b>

Trusted Global Innovator

NTT DATA EAS, Inc.  
100 City Square, Boston, MA 02129, VAT Registration  
Number: 0006583-0009  
Municipality Reg (San Juan): , Numero Registro -  
54132025361  
Numero de Seguro Social - 383329879

Tax Invoice

Invoice Number	9201000191
Invoice Date	10/15/2019
Due Date	12/14/2019

**Bank Details :**

Account Name: NTT DATA EAS Inc.  
Bank: BANK OF AMERICA MERRILL LYNCH, NA  
Account Number (USD): 004646890515  
ACH/EFT ABA/Routing Number: 011000138  
SWIFT BIC: BOFAUS3N

**Remit To :**

Please remit payment via EFT (See Bank Details) and  
send remittance details to the following email  
address: NTTDataServices.AR@nttdata.com

Invoice Number	9201000198
Invoice Date	11/08/2019
Due Date	01/07/2020

**Bill To :**

Environmental Quality Bd of PR  
PO Box 11488  
San Juan  
PR, PR 00910  
USA

**Ship To :**

Environmental Quality Bd of PR  
PO Box 11488  
San Juan  
PR, PR 00910  
USA

Customer Number :	100237	Customer VAT ID :	
Payment Terms :	Net due in 60 days	Contract No :	4400022554
Contact Person :	Tania Vazquez	PO Number :	N/A

**Amount Due : USD 55,371.60**

Billing Period From : 10/01/2019

To : 10/31/2019

To ensure proper credit, please include invoice number with remittance.  
For billing questions, please contact [Billing.Inquiry@nttdata.com](mailto:Billing.Inquiry@nttdata.com) or  
call +1 781 577 3495  
NTT Point Of Contact : Eduardo Delannoy

Description	Qty	UOM	Rate	Gross Amount	Surcharge	Discount	Tax Amount	Net Amount USD
<b>Project ID:</b>	<b>R-0020032015</b>	<b>Continuance of Services for FY2019</b>						
<b>Beatriz Saez</b>								
Consulting Hours	141.70	HRS	98.00	13,886.60				13,886.60
<b>Eduardo Delannoy</b>								
Consulting Hours	177.00	HRS	115.00	20,355.00				20,355.00
<b>Arlene Alcoba</b>								
Consulting Hours	178.00	HRS	90.00	16,020.00				16,020.00
<b>Wanda Lugo Cintron</b>								
Consulting Hours	73.00	HRS	70.00	5,110.00				5,110.00
<b>Project SubTotal:</b>	<b>569.70</b>	<b>HRS</b>		<b>55,371.60</b>				<b>55,371.60</b>
						<b>Net Price :</b>		<b>55,371.60</b>
						<b>Total Due :</b>		<b>55,371.60</b>

Trusted Global Innovator

NTT DATA EAS, Inc.  
 100 City Square, Boston, MA 02129, VAT Registration  
 Number: 0006583-0009  
 Municipality Reg (San Juan): , Numero Registro -  
 54132025361  
 Numero de Seguro Social - 383329879

Tax Invoice

Invoice Number	9201000198
Invoice Date	11/08/2019
Due Date	01/07/2020

**Bank Details :**

Account Name: NTT DATA EAS Inc.  
 Bank: BANK OF AMERICA MERRILL LYNCH, NA  
 Account Number (USD): 004646890515  
 ACH/EFT ABA/Routing Number: 011000138  
 SWIFT BIC: BOFAUS3N

**Remit To :**

Please remit payment via EFT (See Bank Details) and  
 send remittance details to the following email  
 address: NTTDataServices.AR@nttdata.com

**Bill To :**

**Ship To :**

**Amount Due : USD 32,319.80**

Billing Period From : 11/01/2019

To : 11/30/2019

To ensure proper credit, please include invoice number with remittance.  
For billing questions, please contact [Billing.Inquiry@nttdata.com](mailto:Billing.Inquiry@nttdata.com) or  
call +1 781 577 3495  
NTT Point Of Contact : Eduardo Delannoy

Description	Qty	UOM	Rate	Gross Amount	Surcharge	Discount	Tax Amount	Net Amount USD
<b>Project ID:</b>	<b>R-0020032015</b>	<b>Continuance of Services for FY2019</b>						
<b>Beatriz Saez</b>								
Consulting Hours	56.35	HRS	98.00	5,522.30				5,522.30
<b>Eduardo Delannoy</b>								
Consulting Hours	100.50	HRS	115.00	11,557.50				11,557.50
<b>Arlene Alcoba</b>								
Consulting Hours	125.00	HRS	90.00	11,250.00				11,250.00
<b>Wanda Lugo Cintron</b>								
Consulting Hours	57.00	HRS	70.00	3,990.00				3,990.00
<b>Project SubTotal:</b>	<b>338.85</b>	<b>HRS</b>		<b>32,319.80</b>				<b>32,319.80</b>
						<b>Net Price :</b>		<b>32,319.80</b>
						<b>Total Due :</b>		<b>32,319.80</b>



Invoice Number	9201000212
Invoice Date	12/06/2019
Due Date	02/04/2020

**Bank Details :**

Account Name: NTT DATA EAS Inc.  
Bank: BANK OF AMERICA MERRILL LYNCH, NA  
Account Number (USD): 004646890515  
ACH/EFT ABA/Routing Number: 011000138  
SWIFT BIC: BOFAUS3N

**Remit To :**

Please remit payment via EFT (See Bank Details) and  
send remittance details to the following email  
address: NTTDataServices.AR@nttdata.com

**Bill To :**

**Ship To :**

Description	Qty	UOM	Rate	Gross Amount	Surcharge	Discount	Tax Amount	Net Amount USD
<b>Project ID:</b>	<b>R-0020032015</b>	<b>Continuance of Services for FY2019</b>						
<b>Beatriz Saez</b>								
Consulting Hours	17.80	HRS	98.00	1,744.40				1,744.40
<b>Eduardo Delannoy</b>								
Consulting Hours	73.00	HRS	115.00	8,395.00				8,395.00
<b>Arlene Alcoba</b>								
Consulting Hours	40.00	HRS	90.00	3,600.00				3,600.00
<b>Wanda Lugo Cintron</b>								
Consulting Hours	84.00	HRS	70.00	5,880.00				5,880.00
<b>Project SubTotal:</b>	<b>214.80</b>	<b>HRS</b>		<b>19,619.40</b>				<b>19,619.40</b>
						<b>Net Price :</b>		<b>19,619.40</b>
						<b>Total Due :</b>		<b>19,619.40</b>

Trusted Global Innovator

NTT DATA EAS, Inc.  
100 City Square, Boston, MA 02129, VAT Registration  
Number: 0006583-0009  
Municipality Reg (San Juan): , Numero Registro -  
54132025361  
Numero de Seguro Social - 383329879

Tax Invoice

Invoice Number	9201000216
Invoice Date	01/06/2020
Due Date	03/06/2020

**Bank Details :**

Account Name: NTT DATA EAS Inc.  
Bank: BANK OF AMERICA MERRILL LYNCH, NA  
Account Number (USD): 004646890515  
ACH/EFT ABA/Routing Number: 011000138  
SWIFT BIC: BOFAUS3N

**Remit To :**

Please remit payment via EFT (See Bank Details) and  
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address: NTTDataServices.AR@nttdata.com